

TTAB

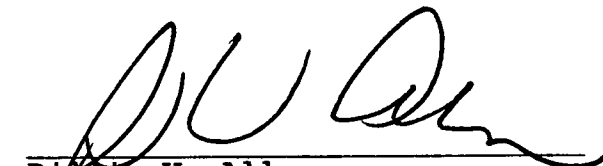
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AS HOLDINGS, INC.,)	
)	
Opposer,)	
)	Opposition No. 91182064
-vs-)	
)	Serial No. 76/461,157
H&C MILCOR, INC., f/k/a/)	Mark: Miscellaneous Design
AQUATICO OF TEXAS, INC.,)	(Pipe Boot Product Design)
)	
Applicant.)	

NOTICE OF FILING

TO: Terence J. Linn, Esq.
Van Dyke, Gardner, Linn & Burkhart, LLP
2852 Charlevoix Drive SE, Suite 207
Grand Rapids, MI 49588-8695

PLEASE TAKE NOTICE that on the 6th day of November, 2009, we filed with the United States Trademark Trial and Appeal Board, Attention: George C. Pologeorgis, Interlocutory Attorney, APPLICANT'S MOTION TO COMPEL THE PRODUCTION OF PHYSICAL EXHIBITS AND REQUEST FOR EXTENSION OF TIME, a copy of which is attached hereto.


Dillis V. Allen
Attorney for Applicant
Reg. No. 22,460



11-06-2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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*APPLICANT'S MOTION TO COMPEL THE PRODUCTION OF
PHYSICAL EXHIBITS AND REQUEST FOR EXTENSION OF TIME*

This Motion is to compel the Plaintiff, AS HOLDINGS, INC., to produce physical exhibits already introduced into evidence. Plaintiff refuses to do so because it is "inconvenient". Also, because of this interruption, Applicant asks for an extension of its trial period.

The Applicant's Trial Period is presently set to expire on December 3, 2009. In Applicant's fax of November 2, 2009 to Plaintiff's counsel (Exhibit A), Applicant's counsel requested shipment of all physical exhibits introduced at Applicant's depositions of Plaintiff's employees (David V. Smith, Jr., Christopher C. Kintzele, Joseph V. Merryman, David V. Smith, III, and Michael J. Hubbard) on November 12 and 13, 2008. Plaintiff's counsel is holding the physical exhibits for "safekeeping" by agreement of the parties. Ap-

plicant also was arranging a trial deposition schedule for the week of November 9th to November 13th with Plaintiff's counsel.

Applicant's counsel previously provided Plaintiff, AS HOLDINGS, INC.'s counsel with Applicant's counsel's Federal Express number to reduce the expense of the shipment. Nevertheless, in Plaintiff's counsel's refusal in an email dated November 5, 2009(Exhibit B), he maintained it was an unnecessary expense to his client.

Plaintiff's counsel also suggests the pictures of the physical exhibits are sufficient for trial. The answer to that is ---- No ----. The pictures of the physical exhibits only show one view each, and many of the physicals, such as the several pipe boots introduced, have legends that do not appear, or are difficult to distinguish, in the Exhibit photographs.

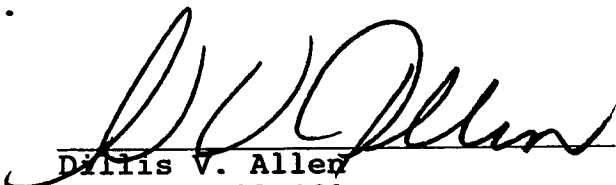
Furthermore, the Applicant's witnesses have never seen most of the physical exhibits. How in the world is Applicant to try this case without them.

The Plaintiff's refusal to produce the physical exhibits is highly prejudicial and an affront to the judicial integrity of the Trademark Trial and Appeal Board.

For these reasons, Applicant asks the Trademark Trial and Appeal Board to immediately compel the Plaintiff to ship the physical exhibits already in evidence to Applicant's counsel.

Also, this interruption in Applicant's Trial Period necessitates an extension of 30 days from the date of the Board's Decision on this Motion, and a resetting of all hinge dates. Applicant's counsel will be out of town the last week of November, so the rescheduling of witnesses (see Applicant's Pretrial Disclosures dated October 16, 2009 (Exhibit C) for trial makes it imperative that Applicant's Trial Period be extended.

For the above reasons, Applicant asks the Trademark Trial and Appeal Board to compel the Plaintiff, AS HOLDINGS, INC. to deliver immediately all physical exhibits already in evidence, and to extend Applicant's Trial Period 30 days from the date of its decision on this Motion and to reset all hinge dates accordingly.


Dennis V. Allen
Reg. No. 22,460
Attorney for H&C MILCOR, INC.

DATED: November 5, 2009

CERTIFICATE OF SERVICE

This is to certify that on November 5, 2009, Applicant's Motion to Compel the Production of Physical Exhibits and Request for an Extension of Time was filed via Federal Express with the Trademark Trial and Appeal Board and a true and correct copy of said Motion was faxed to Plaintiff's counsel at 616/975-5505, and a copy sent on November 5, 2009, via first-class mail, postage prepaid, to Plaintiff's counsel as follows:

Terence J. Linn, Esq.
Van Dyke, Gardner, Linn & Burkhardt, LLP
2851 Charlevoix Drive SE, Suite 207
Grand Rapids, MI 49588-8695



Dillis V. Allen

Dillis V. Allen, Esq.
105 S. Roselle Road
Suite 101
Schaumburg, IL 60193
847/895-9100

DILLIS V. ALLEN

ATTORNEY AT LAW

105 S. Roselle Road, Suite 101
Schaumburg, Illinois 60193

(847) 895-9100

November 2, 2009

VIA FAX AND U.S. MAIL

Terence J. Linn, Esq.
Van Dyke, Gardner, Linn & Burkhardt, LLP
2851 Charlevoix Drive S.E.
P.O. Box 88865
Grand Rapids, MI 49588-8695

RE: AS Holdings, Inc. v. H&C Milcor, Inc.
Mark: Miscellaneous Design
(Pipe Boot Product Design)
Opposition No. 91182064
Filed: 1-22-08

Dear Terry:

Please Federal Express all physical exhibits to my home
as follows:

Dillis V. Allen
367 Arbor Glen Boulevard
Schaumburg, IL 60195
847/895-9100

Thank you.

Very truly yours,



Dillis V. Allen

DVA/dkm

EXHIBIT A

**AS Holdings v. Milcor: Testimonial Depositions**

Thursday, November 5, 2009 7:59 AM

From: "Terry Linn" <Linn@vglb.com>
To: "DILLIS ALLEN" <vicvardon@sbcglobal.net>
Cc: "Matthew Kendall" <Kendall@vglb.com>

Dillis:

Earlier this week I sent a letter in response to your fax. Discovery is over and I would rather not produce the physical exemplars again, particularly at expense to my client. I would suggest using the photographs. The TTAB would not accept submission of a physical exemplar exhibit anyway.

We are generally available for testimonial depositions next week. I would prefer avoiding Wednesday if possible, but if that is the only day that works we can make it work. As discussed with the motions attorney, we would attend those testimonial depositions by way of telephone.

I reiterate our objection stated in my letter of October 22, 2009. We would object to testimony from anyone not identified in the initial disclosures and thus not properly identified in pretrial disclosures. We would attend the testimony of any such person under protest followed by an appropriate motion to strike.

Terence J. Linn

Van Dyke, Gardner, Linn & Burkhart, LLP

Suite 207

2851 Charlevoix Drive, S.E.

Grand Rapids, MI 49546

Phone: (616) 975-5503

Fax: (616) 975-5505

e-mail: linn@vglb.com

CONFIDENTIAL: The information in this communication, and in any attachment to it, is confidential and may be privileged. If you are not the intended recipient referred to above, you should not disclose any of the contents to anyone, make copies or take any action in reliance upon it. If you have received this communication in error please contact the sender, delete all electronic copies and destroy any hard copies. Thank you.

This e-mail message has been scanned for Viruses and Content and cleared by MailMarshal

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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AQUATICO OF TEXAS, INC.,)	(Pipe Boot Product Design)
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Applicant.)	

APPLICANT, H&C MILCOR, INC. f/k/a AQUATICO OF TEXAS, INC.'S
PRETRIAL DISCLOSURES

Pursuant to Rule 2.121(c), 37 C.F.R. Section 2.121(d),
Applicant, H&C Milcor, Inc. f/k/a Aquatico of Texas, Inc.,
makes the following pretrial disclosures:

WITNESSES

Applicant intends to take testimony or may take the
testimony if the need arises, from the following witnesses:

1. Tom Mollen, Field Supervisor/Installer of Winward Roofing, 919 S. Sacramento, Chicago, IL 60611, Telephone: 773/638-6580. Mr. Mollen may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

2. John Cirachi, Controller of Winward Roofing,, 919 S. Sacramento, Chicago, IL 60611, Telephone: 773/638-6580. Mr. Cirachi may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

3. Larry Kozak, Engineering Manager of Hart & Cooley, 815 Kimberly Drive, Carol Stream, IL 60188, Telephone: 630/588-2544. Mr. Kozak may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

4. Larry Devitt, Marketing Manager/Architect of Hart & Cooley, 815 Kimberly Drive, Carol Stream, IL 60188, Telephone: 630/588-2514. Mr. Devitt may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

5. Sean Steimle, Vice President of Hart & Cooley, 815 Kimberly Drive, Carol Stream, IL 60188, Telephone: 630/588-2510. Mr. Steimle may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the

functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

6. Russ Verbrugge, Engineer of Hart & Cooley, 5030 Corporate Exchange Boulevard SE, Grand Rapids, MI 49512, Telephone: 616/656-8200. Mr. Verbrugge may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

7. Tom Kelly, Owner/Roofing Manager of 2001 Company, 325 Thomaston Avenue, Waterbury, CT 06702, Telephone: 800/537-7663. Mr. Kelly may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

8. George Criel, President of Century Roofing Consulting, 1645 Hicks Road, Rolling Meadows, IL 60008, Telephone: 847/202-8500. Mr. Criel may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials

and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

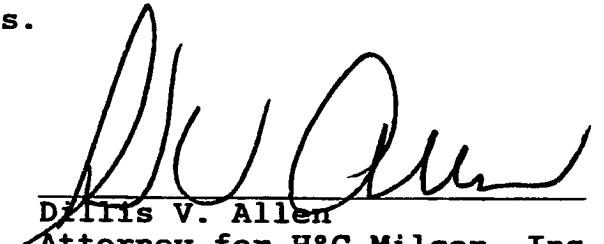
9. Mitch Rabin, Owner of A1 Roofing, 1425 Chase Avenue, Elk Grove Village, IL 60007, Telephone: 847/952-3600. Mr. Rabin may testify regarding Applicant's products, Opposer's activities regarding pipe boots, the functional aspects of the industry and Portals Plus Pipe Boots, the origination of the Firestone and other manufacturers' pipe boots, the installation of pipe boots, the marketing of industry and Portals Plus pipe boots, materials and specifications thereof used in the manufacture of pipe boots, the testing of pipe boots, the recognition of the Portals Plus pipe boot in the trade and industry, the file history of Serial No. 76/461,157, patents relating to pipe boots, and industry practices.

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EXHIBITS

Applicant intends to rely on or may rely on the Exhibits listed in the Opposer, AS HOLDINGS, INC.'s Pretrial Disclosures, and additionally may rely on the deposition witnesses and exhibits also listed in Opposer, AS HOLDINGS, INC.'S Pretrial Disclosures, and also may rely on further

Exhibits that may be produced at trial. These latter Exhibits will be provided to Opposer's attorney either in advance of the testimony of the individual witnesses or may be contemporaneously provided as the testimony of the individual witnesses progresses.

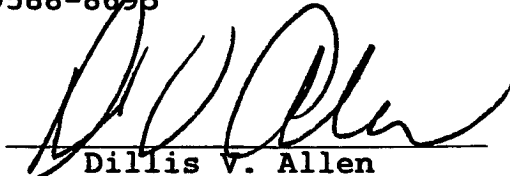

Dilllis V. Allen
Attorney for H&C Milcor, Inc.
f/k/a Aquatico of Texas, Inc.
Reg. No. 22,460

Dated: October 16, 2009

CERTIFICATE OF SERVICE

This is to certify that a copy of **APPLICANT, H&C MILCOR, INC. f/k/a AQUATICO OF TEXAS, INC.'S PRETRIAL DISCLOSURES** was sent via Federal Express to the Trademark Trial and Appeal Board on October 16, 2009, and a true and correct copy of same was sent on October 16, 2009, via first-class mail, postage prepaid, to Opposer's counsel as follows:

Terence J. Linn, Esq.
Van Dyke, Gardner, Linn & Burkhardt, LLP
2851 Charlevoix Drive SE, Suite 207
Grand Rapids, MI 49588-8695


Dilllis V. Allen

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